IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1092 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

M A MALEK - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

MR DJ BHATT for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 30th November, 1987 passed by the Industrial Tribunal, in Reference [I.T.] No. 601 of 1986 whereby the Industrial Tribunal has extended the age of superannuation from 58 to 60 and has further directed to

reinstate the respondent with continuity in service along with payment of salary from the date of his superannuation.

2. The short facts of the case are that the respondent was initially working as a Traffic Inspector at Kaira Depot of Nadiad Division. It is the case of the respondent that thereafter he was absorbed as Conductor in the the petitioner Corporation from 1st April, 1951. It is further the case of the respondent though the Circulars were issued by the petitioner Corporation, the petitioner Corporation has not granted the benefit of the Circulars and ordered to be superannuated on 30th November, 1986. Feeling aggrieved by the said order, the respondent raised and industrial dispute which was ultimately referred to the Industrial Tribunal for adjudication. The Industrial Tribunal after appreciating the materials produced before it, passed the impugned award.

3. Mr. Raval learned advocate for the petitioner Corporation has contended that the Industrial Tribunal has committed an error in ignoring the two crucial document produced below Exh. 32 namely the application

tendered by the respondent which was filled up and signed by the respondent and the appointment order dated 8th January, 1951 wherein it was clearly stated that the respondent has been temporarily appointed as Conductor on daily wage basis at Rs.8 per day from 8th January, 1951 and subject to approval by D.R.C. Mr. Raval has further contended that the Industrial Tribunal has committed an error in ignoring the original documents which were produced by the respondent, while taking into consideration the Certificate issued by the private employer produced below Exh. 18 & 19.

3.1. Mr. Raval has further contended that though an undertaking was filed by the respondent to abide by the conditions stated in the appointment order, the Industrial Tribunal has extended the age of superannuation.

4. I have heard the learned advocates for the parties. While admitting the matter on 3rd March, 1988 this Court had passed the following order:-

> “RULE. Ad-interim relief against implementation of the award as Mr. Shelat on behalf of the petitioner Corporation states that in the event the Corporation

> fails in this petition and the contention of the workman that he is entitled to superannuate on completion of sixty years is upheld, the Corporation will pay wages and all allowances due to him as if he continued in service and superannuated at the age of sixty years within six weeks from the date of the decision."

4.1. Having perused the materials produced on record, it transpires that the Industrial Tribunal has not taken into consideration the relevant documents namely the appointment order as well as the application tendered by the respondent below Exh. 32. Even otherwise the respondent was appointed on daily wage basis and he was not absorbed in service by the Corporation on the basis of his previous service. Apart from that the Tribunal ought not to have relied upon the certificate of a private employer of later date. Moreover his application and appointment order clearly establishes that he was bound by the Rules of the Corporation. However, the respondent has relied upon the Circular below Exh. 15 for claiming the benefits granted to the employees of private transport company, but the same will not be applicable in the present case. Thus, the impugned award passed by the Industrial Tribunal is bad, illegal and perverse and requires to be quashed and set aside.

5. In the premises aforesaid, the petition is allowed. The impugned award dated 30th November, 1987 passed by the Industrial Tribunal, in Reference [I.T.] No. 601 of 1986 is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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